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REPORT
99-49

HOTLINE UPGRADE

MAY 14 (legislative day, April 15), 1985.—Ordered to be printed

Mr. GOLDWATER, from the Committee on Armed Services, submitted the following

REPORT

[To accompany S.J. Res. 108]

The Committee on Armed Services, to which was referred the joint resolution (S.J. Res. 108) authorizing the Secretary of Defense to provide to the Soviet Union, on a reimbursable basis, equipment and services necessary for an improved United States/Soviet Direct Communication Link for crisis control, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

PURPOSE

The purpose of the joint resolution is to authorize the Secretary of Defense to provide to the Soviet Union, on a reimbursable basis, equipment and services needed to implement the July 17, 1984 agreement between the United States and the Soviet Union on expanding and improving the operation of the U.S./Soviet Direct Communications Link, commonly known as the "Hotline." The joint resolution also authorizes the Secretary of Defense to use any funds available to the Department of Defense (DoD) to procure the equipment and provide the services needed to implement this agreement, and it further directs that the funds received from the Soviet Union as payment for such equipment and services shall be credited to the appropriate DoD account.

BACKGROUND

In June 1963, the United States and the Soviet Union agreed in a Memorandum of Understanding to establish a Direct Communications Link (DCL) for use in time of emergency. Each agreed to

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ensure prompt delivery to its head of government of any communications received over the DCL from the other head of government. The Memorandum of Understanding was negotiated and signed by the heads of the U.S. and Soviet delegations to the Eighteen-Nation Disarmament Conference in Geneva. The DCL was activated in August 1963.

Eight years later, the DCL was updated by a September 30, 1971 agreement negotiated by a special working group of the two SALT delegations and signed by the U.S. Secretary of State and the Soviet Foreign Minister. This agreement provided for the addition of two satellite circuits to the DCL, one using the Soviet Molniya II satellite system and the other the U.S. Intelsat system. Those two circuits became operational in January 1978.

A second special working group of the two SALT delegations simultaneously negotiated a related Agreement on Measures to Reduce the Risk of Outbreak of Nuclear War between the U.S. and the USSR. Each side agreed to notify the other in advance of any planned missile launch extending beyond its national territory in the direction of the other, and for each to notify the other immediately in the event of certain situations that could create a risk of nuclear war. The parties agreed that they would use the DCL to transmit urgent information in situations requiring prompt clarification.

In May 1983, President Reagan proposed to the Soviet Union three measures to improve the bilateral communications network between the two countries: the addition of a high-speed facsimile capability to the Hotline; the establishment of a Joint Military Communications Link (JMCL); and the establishment of high-speed data links between each government and its embassy in the other's capital.

The Secretary of Defense had recommended those proposals to the President following a full and complete study of possible initiatives for enhancing international stability and reducing the risk of nuclear war. That examination, which involved all concerned U.S. government agencies, was mandated by an amendment to the fiscal year 1983 DOD Authorization Act introduced by Senators Jackson, Nunn and Warner directing the Secretary to study a number of crisis control measures, including an improved Hotline. The Secretary of Defense transmitted his findings and recommendations in his April 1983 Report to the Congress on Direct Communications Links and Other Measures to Enhance Stability.

U.S./Soviet negotiations on improving bilateral communications links opened in Moscow in August 1983. Subsequent rounds were held in Washington in January 1984, in Moscow in April 1984, and in Washington in July 1984. On July 17, 1984, President Reagan announced that an agreement had been reached. (Attachment 1)

Under this agreement, a fascimile capability will be added to the Hotline, enabling each country for the first time to transmit and receive graphic materials. In addition, the planned improvements will allow the U.S. and Soviet heads of government to exchange messages more rapidly than they can with the existing teletype. The increase in the speed of communication and the ability to send pictures and maps could be especially critical in future crises.

The Direct Communications Link will now consist of: three circuits (two satellite circuits plus one wire telegraph circuit); one earth station in each country for each satellite circuit; terminals in each country linked to the three circuits and equipped with teletype and facsimile equipment.

The agreement specifies that the U.S. Government will sell the Soviet Union at cost the equipment necessary to install and maintain the improved Hotline. This transaction, which is expected to cost less than $1 million, will include fascimile equipment, personal computer (PC) equipment, modem equipment, and microprocessor systems to ensure the privacy of these very sensitive communications. Most of this transaction will be completed in the initial sale of the specified equipment to the Soviet Union. However, sales of services and additional equipment, including consumable items, will recur periodically throughout the life of the improved Hotline.

COMMITTEE ACTION

S.J. Resolution 108 was introduced on April 4, 1985 by Senators Warner and Nunn and was referred to the Committee on Armed Services. During the Committee's business meeting of May 2, Senators Warner and Nunn presented testimony on the joint resolution. The Committee then approved S.J. Resolution 108 without objection by voice vote.

MAJOR ISSUES CONSIDERED BY THE COMMITTEE

Contribution to crisis stability

The Committee agrees with President Reagan that the July 17, 1984 agreement will make a "modest but positive" contribution toward improving crisis stability and decreasing the risk that a confrontation or conflict between the United States and the Soviet Union could ever occur as a result of accident, miscalulation or misinterpretation. In accordance with the principle of confidentiality concerning communications between heads of state, the precise number of times that the United States and the Soviet Union have used the system has not been disclosed. However, it is evident that the Hotline has proved invaluable in major crises, including the 1967 and 1973 Arab-Israeli wars. The addition of a fascimile capability and the increase in the speed of communication will further enhance the value of this communications link.

Need for new legislative authority

At the request of Senators Warner and Nunn, the General Counsel of the Department of Defense prepared a memo outlining the legal reasons why new legislation was needed to implement the July 1984 agreement. (Attachment 2) The General Counsel determined that use of the Arms Export Control Act as authority for providing the specified equipment to the Soviet Union would not appear to be either viable or appropriate. The memo also notes that use of the Secretary of Defense's contingency fund is intended to meet only "emergency or extraordinary expenses which cannot be anticipated or classified," whereas procurement by DoD of

equipment needed to maintain the improved Hotline is expected to recur over the lifetime of the system.

Transfer of technology

On March 22, Senators Warner and Nunn wrote Assistant Secretary of Defense Richard Perle to request his assessment of the technology transfer aspects of the proposed sale. In a March 25 reply, Assistant Secretary Perle advised the Senators that prior to deciding the final configuration of the proposed upgrade, "the Department of Defense examined each component proposed for that system in the context of applicable transfer of technology regulations." Assistant Secretary Perle stated that based on this review, DoD determined that "the sale of those components for this purpose is entirely consistent with current U S. law and policy regarding trade with the Soviet Union." (Attachment 3)

COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 7, 1985.

Hon. BARRY GOLDWATER,
Chairman, Committee on Armed Services,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S.J. Res. 108, a bill to provide to the Soviet Union, on a reimbursable basis, equipment and services necessary for an improved United States/Soviet Direct Communication Link for crisis control, as ordered reported by the Senate Committee on Armed Services on May 2, 1985.

We expect that no cost to the federal, state, or local governments would be incurred as a result of enactment of this legislation.

Should the Committee so desire, we would be pleased to provide further details on the cost estimate.

With best wishes,
Sincerely,

RUDOLPH G. PENNER.

REGULATORY IMPACT AND CHANGES IN EXISTING LAW

In accordance with rule XXVI, paragraphs 11(b) and 12 of the Standing Rules of the Senate, the Committee concludes that there will be no regulatory impact from the passage of this joint resolution. There will also be no repeal or amendment of existing law.

[Attachment 1]

THE WHITE HOUSE,
OFFICE OF THE PRESS SECRETARY,
July 17, 1984.

Embargoed for release at the conclusion of the briefing.

STATEMENT BY THE PRESIDENT

I am happy to be able to announce today that we and the Soviet Union have reached agreement to expand and improve the operation of the Direct Communications Link, or the "Hotline".

This agreement is a modest but positive step toward enhancing international stability and reducing the risk that accident, miscalculation or misinterpretation could lead to confrontation or conflict between the U.S. and the Soviet Union.

With the addition of a facsimile capability, we will not only be able to exchange messages faster, but for the first time we will be able to send graphic material such as maps or pictures which would play a crucial role in helping to resolve certain types of crises or misunderstandings.

The negotiations which led to this agreement began about one year ago (August 1983), based upon a series of proposals that we first made in May 1983.

In developing this and other initiatives designed to reduce the risk of war due to accident, misunderstanding or miscalculation, we had the benefit of excellent advice from a number of key Congressional leaders, including Senators Warner and Nunn and the late Senator Jackson.

I see this agreement as both an appropriate technical improvement to the Hotline, which has served both our governments well for over twenty years, and as a good example of how we can, working together, find approaches which can move us towards a reduction in the risks of war.

[Attachment 2]

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, DC, April 3, 1985.

LEGAL MEMORANDUM

Subject: Sale of DCL Equipment to the USSR.

The U.S. Government proposes to sell DCL equipment to the Soviet Union. Attached is a memorandum outlining three alternative approaches to achieving the requisite legal authority for the proposed transaction.

The first approach (a security assistance sale) does not now appear to be viable because is it conditioned upon our obtaining from the Soviets certain non-retransfer and security assurances, and because use of the Arms Export Control Act as authority for providing equipment to the USSR would not appear to be appropriate.

The second approach (use of the Secretary's contingency fund authorized by 10 USC § 140) is feasible. The commitment of an amount from this fund sufficient to cover the cost of the equipment and services to be provided to the Soviets has been made. A disadvantage of this approach is that a limited amount is appropriated for the contingency fund. Therefore, to the extent the fund is used for DCL purposes, it will not be available for other critical needs. This disadvantage cannot be avoided by reprogramming other funds into the contingency fund. 10 USC § 140 limits the total

amount that can be expended from the contingency fund in any year to the amount appropriated for this purpose in the DoD Appropriation Act.

Accordingly, the third approach (a Joint Resolution authorizing the use of any DoD funds) is strongly preferred. This approach would involve virtually no cost to the Treasury since the Soviet Union will reimburse the U.S. Moreover, the Joint Resolution would have the great advantage of permitting DoD to avoid depletion of the contingency fund. In addition, this approach is more appropriate for funding foreseeable expenditures that may well be necessary in the future to maintain the system, since the contingency fund is designed to meet only "emergency or extraordinary expenses which cannot be anticipated or classified."

CHAPMAN B. COX.

Attachment.

DEPARTMENT OF DEFENSE,
OFFICE OF GENERAL COUNSEL,
Washington, DC, September 21, 1984.

MEMORANDUM

Subject: Legal Authority for the Sale of DCL Equipment to the USSR (U).

You have requested the opinion of this office regarding the legal implications of various possible funding approaches for a US-Government sale of equipment and spare parts to the USSR in exchange for Soviet payment. The following approaches appear available to carry out such a transaction.

1. A security assistance sale. Although Section 620(f) of the Foreign Assistance Act (FAA) prohibits furnishing any assistance under the FAA to the USSR, that prohibition does not extend to transactions undertaken under other statutory authority such as the Arms Export Control Act (AECA). Section 3 of the AECA provides four conditions of eligibility for a country to purchase defense articles or defense services under the AECA:

(1) The President must find that the furnishing of defense articles (and defense services) to such country will strengthen the security of the United States and promote world peace;

(2) The country must have agreed not to transfer title to, or possession of, any defense article or related training or other defense service so furnished to it to anyone not an officer, employee or agent of that country and not to use or permit the use of such defense article or related training or other defense service unless the consent of the President has first been obtained;

(3) The country shall have agreed that it will maintain the security of such article and will provide substantially the same degree of security protection afforded to such article by the United States Government;

(4) The country is otherwise eligible to purchase or lease defense articles or defense services.

Accordingly, in order for the United States Government to sell DCL equipment to the USSR as a security assistance sale, the President must sign a finding that the furnishing of DCL equip-

ment to the USSR will strengthen the security of the United States and promote world peace. It is possible for such a finding to be limited to declaring a country eligible for just one sale. The USSR must commit to the non-retransfer and security assurances detailed in paragraphs (2) and (3) above.

The USSR must also be "otherwise eligible" to purchase this equipment. This requirement means that there must be no other statutory prohibition on such a sale (e.g., such a provision as the Congressional cutoff of sales to Chile) and that the proposed sale must fall within the scope of the Arms Export Control Act. The objectives of the AECA include encouraging regional arms control and disarmament agreements and discouraging arms races. The purposes for which sales under the AECA are authorized are limited to: internal security; legitimate self defense; permitting the recipient country to participate in regional or collective arrangements of measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security; and enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the social and economic development of such friendly countries. It would appear that participation in the DCL is a measure consistent with the Charter of the United Nations.

In order to obtain the required Presidential Determination making a country eligible under the AECA, the Secretary of State prepares a Memorandum for the President justifying the proposed Determination. Copies of a Presidential Determination and the State Department's justification Memorandum for that determination are attached to this memorandum for your information.

2. Use of the Secretary of Defense's discretionary funds. 10 USC § 140 authorizes the Secretary of Defense to provide, within the limitation of appropriations made for the purpose, for any emergency or extraordinary expense which cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may be spent on approval or authority of the Secretary for any purpose he deems proper. Expenditures made under this authority must be reported on a quarterly basis to the Committees on Armed Services and Appropriations of the Senate and the House of Representatives. There is no provision for reimbursement in 10 USC § 140, since this authority was not originally designed for a purpose such as that under consideration. However, it would be possible, if sufficient funds remain in the appropriation, for the Secretary to direct that DCL equipment be purchased using those funds and provided to the USSR, although any reimbursement from the USSR for such equipment would have to be returned to Miscellaneous Receipts in the US Treasury.

3. A specific Congressional authorization. Instead of using either of the procedures described above, it would be possible to seek new law authorizing the United States to sell the requisite equipment to the USSR. This approach would allow the US to tailor the statutory authorization to the terms of the proposed sale, instead of having to tailor the sale to the statute, as in (1) above. It could also allow the US Government agency purchasing the equipment to be sold to the USSR to put the receipts from the sale back into its own appropriations, which would not be possible under (2) above.

The drawback to this approach is the time required to obtain new law. Congress is due to adjourn on October 5, 1984 and probably will not reconvene until the new Congress is sworn in January, 1985. Your decision concerning adoption of this approach will therefore turn, in part, on the necessary schedule for the sale of this equipment to the USSR.

JOHN H. MCNEILL,
Assistant General Counsel (International).

[Attachment 3]

ASSISTANT SECRETARY OF DEFENSE,
Washington, DC, March 25, 1985.

In reply refer to: I-85/07907

Hon. SAM NUNN,
U.S. Senate, Washington, DC.

DEAR SENATOR NUNN: Thank you for your letter of March 22, 1985, requesting my comments on the legislation which you propose to introduce to facilitate the upgrade of the Direct Communications Link, which the United States and the Soviet Union agreed to undertake in an Exchange of Notes, dated July 17, 1984.

As President Reagan indicated at the time of signature of this agreement, the upgrade of the Hotline by the addition of a facsimile capability is a modest, but positive step toward enhancing international stablity and reducing the risk that accident, miscalculation or misinterpretation could lead to confrontation or conflict between the United States and the Soviet Union. The success of this initiative is due in no small measure to your continued support and advice. Your efforts now, to ensure the smooth and efficient implementation of the agreement, are welcomed by all who believe that it is critical that our leaders be able to communicate rapidly and comprehensively in the event of crisis. I heartily endorse you proposed legislation for this purpose.

I want as well to assure you that the sale of the facsimile system to the Soviet Union is consistent with US technology transfer policies. Prior to the United States' proposing the configuration for the addition of a facsimile capablity to the Direct Communications Link, the Department of Defense examined each component proposed for that system in the context of applicable transfer of technology regulations. We determined that the sale of those components for this purpose is entirely consistent with current U.S. law and policy regarding trade with the USSR. Sale of the quantity of equipment necessary to maintain the reliability of the Soviet part of the Hotline requires COCOM approval, which the U.S. will seek.

I want to underscore for the Congress that there is a great deal of difference between selling the USSR equipment for the specific purpose of improving the Direct Communications Link and allowing the Soviet Union unfettered access to U.S. and Allied high technology products. We will continue to ensure that sales to the Soviet Union are closely scrutinized and seek to ensure that only those which are consistent with our COCOM obligations and strategic trade controls are permitted to go forward.

RICHARD PERLE.

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